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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,967	01/16/2004	Jerome A. Hapka	1261.030US1	6516
21186	7590	11/01/2007	EXAMINER	
SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			A, PHI DIEU TRAN	
		ART UNIT	PAPER NUMBER	
		3633		
		MAIL DATE	DELIVERY MODE	
		11/01/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/758,967	HAPKA ET AL
	<b>Examiner</b> Phi D. A	<b>Art Unit</b> 3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 August 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 and 23-33 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13,23-33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1- are rejected under 35 U.S.C. 103(a) as being unpatentable over Diginosa (6135510) in view of Merz et al (1570072).

Diginosa (figures 2-8) shows an impact resistant window assembly comprising: a double hung window including a window sash movably disposed within a window jamb assembly, the window sash having an exterior portion and an interior portion, the window jamb assembly including a window jamb surface positioned adjacent the window sash, the window jamb surface having a recess therein (at 13, figure 5), a bracket assembly disposed on the sash to slidably inserted into the recess of the jamb to lock the window in place, the bracket having at least a first and second position, a stop (44) that prevents overextension of the bracket, fasteners (at 27b) for mounting the bracket to the sash,

Diginosa does not show a bracket assembly disposed within the recess and including a bracket portion having at least a first position and a second position, the bracket portion disposed within the recess when the bracket portion is disposed in the first position, the bracket portion disposed over a portion of the interior portion of the sash when the bracket portion is disposed in the second position.

Merz et al discloses a bracket assembly disposed within a recess of the jamb and including a bracket portion having at least a first position and a second position, the bracket

portion disposed within the recess when the bracket portion is disposed in the first position, the bracket portion disposed over a portion of the interior portion of the sash when the bracket portion is disposed in the second position, fasteners for mounting the bracket to the jamb.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Diginosa's strucutre to show a bracket assembly disposed within the recess and including a bracket portion having at least a first position and a second position, the bracket portion disposed within the recess when the bracket portion is disposed in the first position, the bracket portion disposed over a portion of the interior portion of the sash when the bracket portion is disposed in the second position as taught by Merz et al because having the bracket assembly mounting in a recess in the jamb would provide the same function of slidable locking of the window sash when needed, and Merz et al teaches the alternative mounting of the bracket assembly on the jamb instead of the sash and provide the same function of slidable locking for the window.

Per claims 2- , Diginosa as modified further shows the bracket portion is slidable from the first position to the second position, wherein the bracket assembly is substantially concealed in the window jamb assembly from a frontal view of the window when the bracket portion is disposed in the first position, wherein the bracket portion includes a stop, where the stop prevents overextension of the bracket portion, wherein the window sash includes a rail and a stile, and the bracket portion is disposed over a portion of the rail and the stile when the bracket portion is disposed in the second position, wherein the bracket assembly further includes a filler disposed within the window jamb assembly, further comprising one or more fasteners securing the bracket assembly to an outer frame, where the one or more fasteners are concealed from

view, the window further including a window jamb liner having a surface with a recess therein, the window sash having an exterior portion and an interior portion, wherein the bracket assembly further includes a base plate(18) coupled with an outer frame of the window, wherein the movable bracket portion is disposed between the filler and a portion of a base plate, wherein the filler includes interlock features, the interlock features coupling a base plate and the movable bracket portion, wherein the window sash includes a rail and a stile, and the bracket portion is disposed over a portion of the rail and the stile when the bracket portion is disposed in the second position, wherein the filler has an outer appearance similar to the jamb liner, wherein the bracket assembly includes a hinge about which the bracket portion moves, wherein the bracket portion includes a tool access port on a leading edge thereof.

***Response to Arguments***

3. Applicant's arguments with respect to claims 1-14, 23-33 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different window locking means.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phi Dieu Tran A PA

10/28/07

*Jeanette Chapman*  
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Primary Examiner  
Art Unit Group 3633